The Washington Post

Local

Justice Dept., FBI to review use of forensic evidence in thousands of cases

By Spencer S. Hsu
July 10, 2012

The Justice Department and the FBI have launched a review of thousands of criminal cases to determine whether any defendants were wrongly convicted or deserve a new trial because of flawed forensic evidence, officials said Tuesday.

The undertaking is the largest post-conviction review ever done by the FBI. It will include cases conducted by all FBI Laboratory hair and fiber examiners since at least 1985 and may reach earlier if records are available, people familiar with the process said. Such FBI examinations have taken place in federal and local cases across the country, often in violent crimes, such as rape, murder and robbery.

The review comes after The Washington Post reported in April that Justice Department officials had known for years that flawed forensic work might have led to the convictions of potentially innocent people but had not performed a thorough review of the cases. In addition, prosecutors did not notify defendants or their attorneys even in many cases they knew were troubled.

On Tuesday, the Justice Department announced that it will conduct the more expansive review.

“The Department and the FBI are in the process of identifying historical cases for review where a microscopic hair examination conducted by the FBI was among the evidence in a case that resulted in a conviction,” spokeswoman Nanda Chitre said in a statement. “We have dedicated considerable time and resources to addressing these issues, with the goal of reaching final determinations in the coming months.”

FBI spokeswoman Ann Todd deferred comment to the Justice Department.

In its April report, The Post identified two District men convicted largely on the testimony of FBI hair analysts who wrongly placed them at crime scenes. Santae A. Tribble, now 51, was convicted of killing a taxi driver in 1978, and Kirk L. Odom, now 49, was convicted of a sexual assault in 1981. Since the Post report, Tribble’s conviction was vacated, and on Tuesday, prosecutors moved to overturn Odom’s conviction and declare him innocent. The Justice Department had not previously reviewed their cases.

Chitre said the new review would include help from the Innocence Project, a New York-based advocacy group for people seeking exoneration through DNA testing. It also would include the National Association of Criminal Defense Lawyers.

Steven D. Benjamin, a Richmond lawyer who is incoming president of the association, called the review "an important collaboration" and a departure from one-sided government reviews that left defendants in the dark.

"Mistakes were made. What is important now is our working together to correct those mistakes," Benjamin said, adding that his organization will "fully assist in finding and notifying all those who may have been affected."

The review comes as the National Academy of Sciences is urging the White House and Congress to remove crime labs from police and prosecutors' control, or at least to strengthen the science and standards underpinning the nation's forensic science system.

The last time the FBI abandoned a forensic practice was in 2005, when it ended efforts to trace bullets to a specific manufacturer's batch through analyzing their chemical composition after its methodology was scientifically debunked. The bureau released files in an estimated 2,500 bullet-lead cases only after "60 Minutes" and The Post reported the problem in 2007.

Michael R. Bromwich, a former Justice Department official who investigated the FBI Laboratory in the mid-1990s as inspector general and, more recently, the city of Houston's crime lab, said the review is important as the nation's crime labs come under scrutiny.

"These recent developments remind us of the profound questions about the validity of many forensic techniques that have been used over the course of many decades and underscore the need for continuing attention at every level to ensuring the scientific validity and accuracy of the forensic science that is used every day in our criminal justice system," Bromwich said.

The Post reported in April that hair and fiber analysis was subjective and lacked grounding in solid research and that the FBI lab lacked protocols to ensure that agent testimony was scientifically accurate. But bureau managers kept their reviews limited to one agent, even as they learned that many examiners' "matches" were often wrong and that numerous examiners overstated the significance of matches, using bogus statistics or exaggerated claims.

Details of how the new FBI review will be conducted remain unclear. The exact number of cases that will be reviewed is unknown. The FBI is starting with more than 10,000 cases referred to all hair and fiber examiners. From those, the focus will be on a smaller number of hair examinations that resulted in positive findings and a conviction.

It also is unclear whether the review will focus only on exaggerated testimony by FBI examiners or also on scientifically unfounded statements made by others trained by the FBI, or made by prosecutors. Also unclear is at what point government officials will notify defense attorneys or the Innocence Project.

In past reviews, the department kept results secret and gave findings only to prosecutors, who then determined whether to turn them over to the defense.

Comments

Spencer S. Hsu

Spencer S. Hsu is an investigative reporter, two-time Pulitzer finalist and national Emmy Award nominee. Hsu has covered homeland security, immigration, Virginia politics and Congress. Follow